

# **Exhibit A**

| Claims Still Being Challenged By P&G <sup>1</sup>   | Ultreo's Summary of Responses and Cross-References <sup>2</sup>  |
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| <p>1) An injunction against all claims that discuss "bubbles" and their ability to remove plaque.</p> <p><i>Examples:</i></p> <p><u>Current Sky Mall Ad</u></p> <p><i>"The sonic bristles create bubbles that pulsate at an exact ultrasonic frequency for optimal plaque removal." PX 59.</i></p> <p><u>Website</u></p> <p><i>Links to magazine articles:</i></p> <p><i>MetroSource: "As the moving electric bristles create bubbles in the mouth, the Ultreo uses ultrasound waves to transform them into pulsating bubbles'- a result that effectively removes plaque." PX 127A.</i></p> <p><i>NotCot.com: "the ultrasound technology creates tiny bubbles that blast away the plaque." PX 127C.</i></p> <p><i>Complex Magazine: "The Ultreo is unique: Instead of using brush contact to clean your teeth, ultrasound waves create bubbles that scrub plaque from crevices and bumps on your teeth." PX 127F.</i></p> <p><u>Infomercial</u></p> <p><i>Depictions or images of bubbles pulsating in the mouth. PX 128.</i></p> | <ol style="list-style-type: none"> <li>1. The <i>SkyMall</i> advertisement is not Ultreo's. It was created and placed by Frontgate, a third-party retailer. (Proposed Findings, ¶¶ 15, 74).</li> <li>2. Ultreo has asked Frontgate to change its <i>SkyMall</i> advertisement to remove the language at issue, and Frontgate has said it will do so. (Proposed Findings, ¶¶ 15, 88).</li> <li>3. Ultreo cannot be held liable for the Frontgate advertisement in <i>SkyMall</i> magazine or what other third parties may be saying about the Ultreo. (Proposed Findings, ¶¶ 14-15, 74).</li> <li>4. The magazine articles were written by third parties and reflect their views of the product. P&amp;G's Oral-B website also links to magazine articles that favorably mention its power toothbrushes. (Proposed Findings, ¶¶ 14, 74 and Exhibit D).</li> <li>5. The infomercial does not show bubbles removing plaque and speaks only of a feeling of clean. It is true that Ultreo's ultrasound causes bubbles to pulsate. (Proposed Findings, ¶¶ 2, 24-25, 78).</li> </ol> |

<sup>1</sup> From P&G's "Claims That Should Be Enjoined" Submission (PX 161).

<sup>2</sup> Cross-references are to Ultreo's Proposed Findings of Fact and Conclusions of Law ("Proposed Findings").

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| <p>2) An injunction against all claims that attribute a cleaning or plaque-removal effect to the ultrasound component of Ultreo, whether alone or in combination with bristle action.</p> <p><i>Examples:</i></p> <p><u>Website</u></p> <p><i>"the Ultimate Ultrasound Clean." PX 127.</i></p> <p><u>Infomercial</u></p> <p><i>"Ultreo is not just an improved version of your old school power toothbrush. Thanks to its patented ultrasound wave guide technology, Ultreo is fundamentally different from any other toothbrush, including the one you're using now. It is like this is a manual toothbrush scrubs your teeth with bristle action. That's it. A power toothbrush scrubs your teeth with bristle action [ . . . ] high speed bristle action. Ultreo does something else altogether, something more." PX 128B, at 19-20.</i></p> <p><i>"What does the Ultreo difference buy you? Oh, just the ultimate ultrasound clean; smoother, cleaner, whiter." PX 128B, at 12.</i></p> <p><i>"Ultreo is a new kind of cleaning tool. Different than anything that's come before, including the brush you're using now. You want a better way to get your mouth really clean. You found it... Find out what you may have been missing, like all that hard to reach plaque." PX 128B, at 24. "Compared to everything that's come before, Ultreo is different and that difference is ultrasound." PX 128B, at 2.</i></p> | <ol style="list-style-type: none"> <li>1. Claims using the phrase "ultimate ultrasound" are puffery. P&amp;G refers to its technology as "smart" and "amazing." (Gallagher Dir. ¶ 58; Proposed Findings, ¶ 78).</li> <li>2. The infomercial statements are a description of the product's technology, not a performance claim, and are truthful. (Proposed Findings, ¶ 2).</li> <li>3. Ultreo is different from other power toothbrushes. That statement is true. (Proposed Findings, ¶ 2).</li> <li>4. The combination claim is true. The Ultreo product, utilizing both mechanical brushing and non-mechanical technologies, has been clinically shown to remove plaque and stains. (Proposed Findings, ¶ 3).</li> </ol> |

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| <p>3) An injunction against any claims that Ultreo cleans or has an effect "beyond the bristles."</p> <p><i>Examples:</i></p> <p><u>Retail Presentations</u><br/> <i>"Our presentation specifically addressed the unique characteristic of [the Ultreo] cleaning the pits, fissures, interproximals ... often where the bristles do not go-by the bubble action of the ultrasonic wave activation." PX 51</i></p> <p><u>Website</u><br/> <i>Links to magazine articles:</i><br/> <i>Popular Science: "A transducer in this device emits ultrasound waves, whipping your toothpaste into a pulsating froth of microscopic bubbles that penetrate under the gum-line and between teeth." PX 127M.</i></p> | <ol style="list-style-type: none"> <li>1. The statement quoted from PX 51 is not part of Ultreo's retail presentation. It is a statement that Ultreo requested a retailer <i>not</i> make. (Tr. at 839).</li> <li>2. The statement in <i>Popular Science</i> is its opinion, not Ultreo's. (Proposed Findings, ¶¶ 14, 74).</li> <li>3. Any beyond-the-bristles claims by Ultreo are truthful and adequately supported by laboratory studies which are disclosed in connection with the claims. (Proposed Findings, ¶¶ 26-63).</li> </ol> |

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|---|--|
| <p>4) An injunction against all claims that connect the "feeling of clean" to the ultrasound or the bubbles.</p> <p><u>Examples:</u></p> <p><u>Packaging</u></p> <p><i>"Ultreo's bristles create microbubbles that are powerfully activated by nearly 4 million cycles of ultrasound energy per brushing channeled by a patented ultrasound waveguide. The result is an incredible, long-lasting feeling of clean."</i></p> <p><i>"1. Precisely tuned sonic bristle action creates microbubbles and cleans on contact</i></p> <p><i>2. Ultrasound is channeled into bubbles through a patented ultrasound waveguide</i></p> <p><i>3. Bubbles are activated by the ultrasound and transformed into pulsating bubbles for an incredible feeling of clean."</i></p> <p><i>"Cleaner Ultreo's combination of ultrasound waveguide technology and sonic bristle action results in an incredible, long-lasting feeling of clean" PX 74.</i></p> <p><u>Website</u></p> <p><i>"Ultreo's bristles create microbubbles that are powerfully activated by nearly 4 million cycles of ultrasound energy per brushing channeled by a proprietary ultrasound waveguide. The result is an incredible, long-lasting feeling of clean."</i></p> <p><i>"How does the Ultreo work? A: There are 3 main components to Ultreo's technology: first precisely tuned sonic bristles create bubbles and clean teeth upon contact. Second, ultrasound energy is channeled through a patented waveguide into the bubbles. And third, the bubbles are activated by the ultrasound energy and transformed into pulsating bubbles for an incredible feeling of clean"</i></p> <p><i>"Cleaner Ultreo's combination of ultrasound waveguide technology and sonic bristle action results in an incredible long-lasting feeling of clean." www.ultreo.com, as of 1/10/2007.</i></p> <p><u>Infomercial</u></p> <p><i>"And here at the top, notice the ultrasound wave guide nestled in the center of the sonic action bristles. This is where the magic happens. When you were a kid, you thought there was something special about bubbles. Turns out you were right, there is. And Ultreo's got it. Ultreo's precisely tuned sonic bristles create micro bubbles and clean your teeth upon contact. Then ultrasound energy is channeled through a patented wave guide into microbubbles. The microbubbles are activated by the ultrasound energy and transformed into pulsating bubbles for an incredible feeling of clean. It may seem like magic, but the applied science behind Ultreo is real." PX 128B, at 13-14</i></p> <p><i>"So here's the bottom line, with Ultreo your teeth will feel cleaner because they are cleaner. PX 128B, at 23.</i></p> | <p>1. The packaging claims are true, as admitted by P&amp;G's Mr. Randall. (Proposed Findings, ¶ 11).</p> <p>2. The website and infomercial claims are similar to the packaging claims and thus are also conceded to be true. (Proposed Findings, ¶ 11).</p> <p>3. Descriptions of how the product works and the technology it uses are true and are not performance claims. (Proposed Findings, ¶ 2).</p> <p>4. P&amp;G makes "feeling of clean" claims and Mr. Randall acknowledged that there is nothing wrong in doing so. (Proposed Findings, ¶¶ 11, 24-25, 78).</p> <p>5. Ultreo's "feeling of clean" claims are substantiated, and thus true, and are non-actionable opinion. (Proposed Findings ¶¶ 24-35, 78).</p> |

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| <p>5) In all advertising discussing the benefits, effects, or "difference" of ultrasound, Ultreo should disclose that "clinical studies show the ultrasound component of the Ultreo does not remove plaque from the teeth" or words to that effect.</p> <p><i>Examples:</i></p> <p><u>Professional Print Ad</u></p> <p><i>"Ultreo's combination of ultrasound waveguide technology and sonic bristle action can remove hard to reach bacteria that bristle action alone can leave behind*."</i></p> <p><i>* As shown in laboratory studies conducted at a leading research university."</i></p> <p>PX 62.</p> <p><u>Packaging</u></p> <p><i>"The difference is ultrasound."</i></p> <p><i>*Ultreo Ultrasound efficacy shown in laboratory studies."</i></p> <p>PX 74.</p> | <ol style="list-style-type: none"> <li>1. P&amp;G's suggested disclosure is false. Clinical studies have not shown that the ultrasound component does not remove plaque from teeth. (Proposed Findings, ¶¶ 53-56).</li> <li>2. There is no recognized clinical test to measure the plaque removal capabilities of non-mechanical technologies used in power toothbrushes. (Proposed Findings, ¶¶ 41-46).</li> <li>3. The disclosure that the ultrasound claim is based on a lab test is sufficient. (Proposed Findings, ¶¶ 57-63, 77).</li> </ol> |
| <p>6) In connection with presentations and conversations with dental professionals, Ultreo should be directed to provide candid answers when asked about the absence of clinical studies (instead of the current response which deliberately conceals the truth). Ultreo should disclose that "clinical studies show that Ultreo's ultrasound component has no effect on plaque removal" or words to that effect.</p> <p>PX 43</p>  | <ol style="list-style-type: none"> <li>1. P&amp;G's proposed disclosure is false. Clinical studies do not show that the ultrasound has no effect on plaque. (Proposed Findings, ¶¶ 53-56).</li> <li>2. Ultreo should be free to tell dental professionals that, as stated in the scientific literature, laboratory studies are reliably predictive of what will occur in the mouth. (Proposed Findings, ¶¶ 45, 63).</li> </ol>  |